IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2744 of 1988
with
CIVIL APPLICATION No 156 of 1990
and
SPECIAL CIVIL APPLICATION NO. 4360 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RP YADAV,

Versus

DIST SUPERINTENDENT OF POLICE

Appearance:
MR SHIVANG SHUKLA for MR YN OZA for Petitioner/applicant
in all the matters
MR M.R.MENGDEY, AGP for Respondents in all the matters.

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 05/02/2003

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

The petitioner, Shri R.P.Yadav, in this petition under Article 226 of the Constitution of India, has challenged the order dated 25.5.1988 by which the petitioner is reverted to the post of Police Sub Inspector from Police Inspector. It may be stated that the petitioner was promoted to the post of Police Inspector on 27.5.1988. Thus, the order of promotion dated 27.5.1988 is cancelled within two days and the petitioner is reverted. The petitioner has challenged the said order at Annexure.A as violative of Articles 14 and 16 of the Constitution of India as it is highly unjust, unreasonable and discriminatory.

It is averred in the petition that the order of promotion is sought to be cancelled on the ground that an inquiry by the Anti Corruption Bureau is pending against the petitioner; that without giving any opportunity of explaining the case, the order of reversion is passed; that the same amounts to penal action by the respondents; and therefore, the impugned order is violative of the principles of natural justice.

It may be stated that the petitioner has also filed another petition being Special Civil Application No. 4360 of 1988 wherein he has challenged the order of suspension dated 30th May 1988 with regard to an incident which took place on 17.12.1983 in which the petitioner accepted illegal gratification from the accused of a gambling case. The said order was challenged on the ground that the respondents could not have passed the order after a lapse of more than five years especially when in between the period, nothing adverse has been noticed against the petitioner.

We have heard both the matters today. We were about to dispose of both the matters and at that time, our attention is invited to an application being Civil Application No.156 of 1990 filed by the heirs and legal representatives of the petitioner - Shri R.P.Yadav. Perusing the same, it is clear that the petitioner has expired on 11th October 1988 at Baroda and that the applicants in that application have produced the Death Certificate of the deceased. Since that application is filed in Special Civil Application No.2744 of 1988, we issue Rule in the matter which is waived by learned AGP

Mr.Mengdey. We grant the said application by impleading the said applicants as the petitioners in the main petition and the Rule is made absolute accordingly.

In view of the fact that the petitioner Shri R.P.Yadav has expired, the petition being Special Civil Application No.4360 of 1988 challenging the order of suspension has become infructuous and is accordingly disposed of. Rule is discharged.

We could have disposed of Special Civil Application No.2744 of 1988 wherein the order of reversion is challenged. However, since the question of pension is involved for the heirs and legal representatives, we decide the petition on merits.

In the affidavit-in-reply filed by Shri P.C.Pande, Deputy Inspector General of Police (Administration), in para 4, it has been pointed out that by order dated 27.5.1988, the petitioner was promoted to the post of Police Inspector from the post of Police Sub Inspector. It is stated that through oversight, relevant record pertaining to pending enquiries in the petitioner's case was not considered by the Departmental Committee when the name of the petitioner came to be considered for promotion and in absence of certain important records, the Departmental Promotion Committee could not assess the merit of the petitioner correctly and as a result thereof, name of the petitioner was included in the select list. Subsequently, when the said fact was brought to the notice of the Departmental Promotion Committee, the petitioner's case was reconsidered and after due deliberation and careful consideration, the Departmental Promotion Committee had come to a revised conclusion that the petitioner was not meritorious enough to be promoted to the post of Police Inspector. In view of the said fact, another order dated 29.5.1988 was passed whereby the promotion given to the petitioner to the post of Police Inspector was cancelled.

The aforesaid averments in the affidavit-in-reply have remained uncontroverted as no rejoinder is filed. In view of the above stand taken by the respondents in the affidavit-in-reply, it is clear that necessary records were not placed before the Departmental Promotion Committee and therefore, the Departmental Promotion Committee could not assess the merits of the petitioner. True, in absence of the relevant material, the Departmental Promotion Committee could not have promoted the petitioner. In any case, when a mistake has been pointed out to the Departmental Promotion Committee and

when the Departmental Promotion Committee has corrected its own mistake, it cannot be contended that the promotion once given cannot be cancelled.

It may be stated that a learned Single Judge of this Court in the case of Mrs.J.S.Pandya v. Director General of Police and ors., reported in 1985 GLH 557, has taken a view that once a promotion is given, it cannot be cancelled even though it turns out subsequently that such promotion could have been withheld. It is further observed that the respondents should have considered the position before passing the order of promotion. The promotion cannot be cancelled subsequently on the ground that it was passed in ignorance of a pending departmental inquiry.

Originally, the above case was listed before the learned Single Judge (Coram: R.A.Mehta, J.), who did not agree with the aforesaid view reported in the case of Mrs.J.S.Pandya (supra) and referred the matter before the Division Bench.

After having considered the submissions advanced before us, we are unable to agree with the view expressed in the case of Mrs. J.S.Pandya v. Director General of Police and ors. (1985 GLH 557). In our opinion, if a person is erroneously or illegally promoted, that promotion can be challenged and can be set aside. If the promotion could not have been given and is yet illegally given, it has to be set aside and if the Government on its own sets it aside, it cannot be said that the action of the government in setting aside the illegal promotion is illegal and such power to correct the mistake is inherent. We accordingly over-rule the said decision rendered in the case of Mrs.J.S.Pandya (supra).

In the result, we do not find any merit in the petition, i.e. Special Civil Application No.2744 of 1988. The petition is rejected accordingly. Rule is discharged. No costs.

(Kshitij R. Vyas, J.)

(Sharad D. Dave, J.)
Sreeram.